

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2158.05
COMPLAINT INVESTIGATOR:	Jennifer Campbell
DATE OF COMPLAINT:	August 13, 2004
DATE OF REPORT:	September 8, 2004
REQUEST FOR RECONSIDERATION:	yes/Revised -October 12, 2004
DATE OF CLOSURE:	October 22, 2004

COMPLAINT ISSUES:

Whether the MSD of Lawrence Township violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to provide extended school year (ESY) services.

511 IAC 7-27-2 by failing to schedule the case conference committee (CCC) meeting at a mutually agreed upon date, time, and place, and by failing to give adequate notice of the May 20, 2004, CCC meeting to the parent.

511 IAC 7-27-4(c) by failing to utilize the CCC to develop, review, and revise the student's IEP.

FINDINGS OF FACT:

1. The Student has been identified as disabled and determined eligible for special education and related services.
2. The Student's current individualized education program (Current IEP) was developed on May 20, 2004. The IEP called for extended school year (ESY) services consisting of services with a teacher and a paraprofessional for two hours per day for ten days (total of 20 hours) during the period beginning June 14, 2004, and ending July 30, 2004.
3. The Current IEP did not include specific dates or times for ESY services. The School designated a teacher to provide ESY services (ESY Teacher). On May 21, 2004, and again on May 25, 2004, the ESY Teacher spoke to the Complainant in an attempt to arrange dates and times for ESY services.
4. The Complainant acknowledges that the Student was not in the State of Indiana from June 11, 2004, to August 2, 2004, due to the Student's participation in family-initiated therapy and activities.
5. The School acknowledges that ESY services were not provided. On Wednesday, August 11, 2004, the Complainant informed the School that the Student had returned to Indiana. The first instructional day of the 2004-2005 school year was Tuesday, August 17, 2004. The School did not offer to provide ESY services on Thursday, August 12, 2004, on Friday, August 13, 2004, or on Monday, August 16, 2004.
6. As of March 19, 2004, the School and the Complainant began their communications regarding dates for a case conference committee (CCC) meeting to develop, review, or revise the Student's IEP. Anticipating

that two CCC meetings would be needed, the School and the Complainant attempted to find two mutually agreeable dates. The School proposed 6 dates.

7. On May 12, 2004, the CCC held the first of two meetings. The School "halted" the CCC meeting because of "lack of progress."
8. Between May 13, 2004, and May 17, 2004, the School and the Complainant communicated by email and through letters in an attempt to arrange a date for continuing the CCC meeting. The School proposed three dates and reminded the Complainant that the IEP then in effect (Pre-existing IEP) "goes out of date this month." The Complainant did not agree to any of the suggested dates (previous engagements on May 18, 2004, and May 20, 2004; participation/visitation at the school field and track day on May 21, 2004). As the Complainant did not propose alternate dates, the School did not refuse to consider dates proposed by the Complainant.
9. On May 17, 2004, the School notified the Complainant in writing (by email) that the CCC meeting would reconvene on May 20, 2004, at 9:30 a.m. Although the School was aware that May 20, 2004 was not a mutually agreed upon date, the School was unwilling to postpone the CCC meeting beyond the duration date of the Pre-existing IEP.
10. The School did not propose May 24, 2004, or May 25, 2004, as possible dates for a CCC meeting.
11. On May 20, 2004, the CCC reconvened without the Complainant's participation either in person or by telephone. Prior to the CCC meeting on May 12, 2004, the School provided to the Complainant the CCC meeting agenda that included items addressing factors that a CCC is required to consider in developing, reviewing, or revising an IEP as well as draft IEP goals and objectives. The School also sent draft IEP goals and objectives to the Complainant in advance of the May 12, 2004, CCC meeting. As of the time of the CCC meeting on May 20, 2004, the School had not received a response from the Complainant requesting changes or suggesting additions to the draft goals and objectives. The CCC completed the development of the Current IEP at the CCC meeting on May 20, 2004, and did not propose a change of placement.
12. On May 24, 2004, the School offered in writing (by email) to reconvene the CCC to review the IEP. On May 27, 2004, the School received the Complainant's written request for a CCC meeting to be held before the first instructional day of the 2004-2005 school year (August 17, 2004).
13. The duration date of the Pre-existing IEP was May 26, 2004. The last instructional day of the 2003-2004 school year was Friday, May 28, 2004.
14. On August 24, 2004, the CCC reconvened, with the Complainant in attendance.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate the School offered to provide ESY services to the Student during the time period required by the Current IEP. Although Finding of Fact#5 indicates that ESY services were not provided, Finding of Fact #4 indicates circumstances that excuse the School from its obligation under the IEP. The general rule is that, if the School makes services available during scheduled times, the School is not obligated to make other arrangements to provide services if the Student is absent due to family-initiated activities. Therefore, no violation of 511 IAC 27-7-7(a) is found.

2. Although Finding of Fact #11 indicates that the CCC convened on May 20, 2004, without the Complainant's participation, Findings of Fact #6 and #8 indicate that the School attempted (and documented its attempts) to arrange the CCC meeting at a mutually agreed upon date and time, as required by 511 IAC 7-27-2(b) and 511 IAC 7-27-3(h). Given the combination of circumstances indicated by Findings of Fact #6, #7, #8, #9, and #13, the School was in the position of either violating 511 IAC 7-27-2 by scheduling the CCC on a non-agreed date with short notice or violating 511 IAC 7-27-7(d) by continuing to implement an IEP for a period of more than twelve months, unless the CCC met on or before May 26, 2004. However, Finding of Fact #10 indicates that the School did not explore all possible dates. Therefore, a violation of 511 IAC 7-27-2 (a) and (c) is found. However, Findings of Fact #12 and #14 indicate that appropriate corrective action has been taken.
3. Finding of Fact #11 indicates that, despite the Complainant's absence on May 20, 2004, the School sought parental input and utilized the CCC process to develop, review, and revise the Student's IEP. Finding of Fact #12 indicates that the School offered to reconvene the CCC prior to the filing of this Complaint, and Finding of Fact #14 indicates that the CCC did reconvene after the filing of this Complaint. Therefore, no violation of 511 IAC 7-27-4(c) is found, and if a violation had occurred, corrective action has been taken.

The Department of Education, Division of Exceptional Learners requires no additional corrective action based on the Findings of Fact and Conclusions listed above.